

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Leased Commercial Access

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CS Docket No. 96-60

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REPLY COMMENTS OF GENERAL INSTRUMENT CORPORATION

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REPLY COMMENTS OF GENERAL INSTRUMENT CORPORATION

General Instrument Corporation ("GI"), by its attorneys,
hereby submits its Reply Comments on the Further Notice of
Proposed Rulemaking in the above-captioned proceeding.¹

The comments filed in this proceeding overwhelmingly demonstrate that the Commission's proposed commercial leased access ("CLA") rules will result in substantial harm to cable operators in direct contravention of the CLA statute.² GI

1 Implementation of Sections of the Cable Television Consumer
Protection and Competition Act of 1992: Rate Regulation, MM
Docket No. 92-266, Commercial Leased Access, CS Docket No. 96-60,
Order on Reconsideration of the First Report and Order and
Further Notice of Proposed Rulemaking, FCC 96-122 (released March
29, 1996) ("Notice").

2 See, e.g., Comments of Turner Broadcasting System, Inc.,
News Corp., Ltd., and C-SPAN; A&E Television Networks, Courtroom
Television, NBC Cable and Ovation; Time Warner Cable; USA
Networks, Inc.; LifeTime Television; Intermedia Partners and
Armstrong Utilities; Cox Communications, Inc.; Continental
Cablevision; Comcast Cable Communications; Adelphia
Communications, Corp.; Century Communications, Corp., Falcon
Holding Group, L.P., Insight Communications, Inc., Lenfest
Communications, Inc.; National Cable Television Association;
Buckeye Cablevision; Tele-Communications, Inc.; Joint Comments of
(continued ...)

supports these commenters and files this Reply to point out one additional negative external effect that will result from adoption of the proposed rules -- the creation of operator disincentives to upgrade their networks and to implement advanced technologies. As a leading manufacturer and supplier to cable systems of advanced broadband network and customer equipment, GI is well-positioned to gauge how the proposed CLA rules would likely impact the investment decisions of cable operators.

The financial harms that cable operators would experience as a result of adoption of the proposed CLA rules -- in the form of decreased revenues, loss of subscribers, and other documented negative effects -- would create disincentives for operators to invest in advanced infrastructures and services. The level of investment needed to upgrade existing analog networks to fully digital networks is significant, and cable operators' willingness to commit to this level of investment will turn on their

(... continued)

Cable Television Operators; US West; Rainbow Programming Holdings; The Plunkett Family; Multimedia Cablevision, Inc. and Susquehanna Cable Co.; Small Cable Business Association; Summit Communications; Tele-Media Corporation of Delaware; Encore Media Corp.; Motion Picture Association of America; Prevue Networks, Inc.; Faith & Values; Liberty Sports; International Cable Channel Partnership; E! Entertainment Network, Television Food Networks, America's Health Network, NorthWest Cable News and The Providence Journal Co.; C-SPAN and C-SPAN 2; PBS Horizons Cable; Access Television Network; ESPN; Home & Garden Television; Shop-At-Home; Viacom; Inc.; The Discovery Channel; Outdoor Life, Speedvision, Golf Channel and BET on Jazz.

reasonable assurance of a fair return. This assurance will be diminished and uncertainty will be increased if the CLA rules are revised in such a way as to create additional financial burdens for cable operators and greater artificial demand for carriage of low-quality CLA programmers. Such uncertainty also will reduce the willingness of the capital markets to provide funds for cable network upgrades given operators' reduced ability to ensure and market the delivery of high quality services. As several noted economists have described it:

[T]he substantial capital investments required for the construction of cable systems might not be forthcoming if cable operators are prevented from contracting for the program services that would be carried on a large proportion of the capacities of their systems. An operator that must lease all or most of its capacity to others will, for that reason, be hesitant to make investments in the capacity of its system.³

Moreover, as the record demonstrates, artificially low CLA rates will result in the migration of non-CLA programmers to CLA status, and "the diversion of the access fee that these programmers pay may be sufficiently large to affect the investment decisions of cable operators."⁴

³ Stanley M. Besen, Steven R. Brenner and John R. Woodbury, An Analysis of Cable Television Rate Regulation, Charles River Associates, Inc., filed as an attachment to TCI's Comments in MM Docket No. 92-266, January 27, 1993, at 53.

⁴ Id. at 55-56. "They may be reluctant to rebuild the capacity of their present systems when their existing plant must be replaced, or they may be unwilling to undertake planned capacity expansions." Id.

Such operator disincentives to upgrade their cable infrastructure will also have a severe impact on equipment manufacturers, such as GI, as well as other cable suppliers. Of course, all of this will reduce consumer welfare by delaying the introduction of new technology and advanced infrastructure.

Not only is the imposition of such widespread harms unsupported by the record in this proceeding, but it is fundamentally at odds with the unwavering efforts of both Congress and the Commission in other contexts to promote the rapid and universal deployment of advanced broadband infrastructures.

For example, throughout the Telecommunications Act of 1996 ("1996 Act"), Congress stressed its intent to promote an advanced national information infrastructure. Indeed, the overriding purpose of the bill is:

[T]o provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans⁵

Toward this end, the Act permits cable operators to aggregate their costs of customer equipment into broad categories⁶ in order "to promote the development of a broadband, two-way

⁵ S. Rep. No. 23, 104th Cong., 1st Sess. 1-2 (1995).

⁶ 47 U.S.C. § 543(a)(7).

telecommunications infrastructure."⁷ Similarly, Section 706 of the Act gives the FCC and all State commissions broad authority to use regulatory relief (e.g., forbearance) and other methods to induce private sector deployment of advanced telecommunications capabilities.⁸

The Commission has been equally vigilant in adopting regulatory policies designed to facilitate advanced technology and infrastructure. For instance, it implemented the "going forward" rules to "provide cable operators with additional incentives to expand their facilities and services."⁹ Similarly, the Commission developed the abbreviated cost-of-service form (FCC Form 1235), which permits cable operators to recover the costs of significant network upgrades.¹⁰ The Commission has also

⁷ H.R. Rep. No. 204, 104th Cong., 1st Sess. 107-08 (1995).

⁸ "Advanced telecommunications capability" is defined as any high-speed, switched, broadband media used to originate and receive high-quality voice, data, graphics, and video communications. Id. § 706(c)(1). The Commission may use any regulatory method necessary to "remove barriers to infrastructure development." Id. § 706(a). The statute requires the Commission to conduct regular inquiries to determine whether advanced telecommunications capability is being deployed in a "reasonable and timely" fashion. If the Commission's finding is negative, it must take immediate action to accelerate deployment of advanced capability. Id. § 706(b).

⁹ Going-Forward Order, 10 F.C.C.R. 1226 (1994).

¹⁰ See Cable Services Bureau Develops System Upgrade Form, Public Notice, DA 95-1893, Report No. CS 95-16 (September 19, 1995); OMB Approves FCC Form 1235 Abbreviated Cost-of-Service Filing for Cable Network Upgrades, Public Notice, Report No. CS-96-11, 1996 FCC LEXIS 953 (Feb. 27, 1996).

negotiated and approved Social Contracts with Time Warner and Continental which provide for investments of billions of dollars in increased system capacity and advanced technologies.¹¹ The Commission endorsed these Social Contracts in large part because the upgrade and rebuild provisions represented "a valuable benefit to subscribers in terms of advanced technology, improved reliability and picture quality and increased programming choices."¹²

In short, both the Congress and the Commission have consistently endeavored to provide cable operators with incentives to upgrade their plant and to deploy advanced services and equipment. The proposals in the CLA Notice represent an abrupt and unjustified "about face" with respect to these significant public policy objectives. GI strongly urges the Commission not to implement the proposed CLA rules since the putative benefits are illusory and the substantial harms that

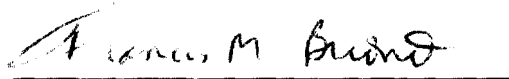
¹¹ The Time Warner Social Contract provides for an investment of \$4 billion over a five year period to upgrade all of Time Warner's systems. See In re Social Contract for Time Warner, Memorandum Opinion and Order, FCC 95-478 (released November 30, 1995), at ¶¶ 25-36. All Time Warner systems would then have fiber to the node architecture. Id. at ¶ 25. The Continental Cablevision Social Contract provides for an investment of at least \$1.35 billion to rebuild and upgrade cable systems in the next 5 years. These investments are to include fiber optic deployment, interactive capabilities and improved system reliability. See In re Social Contract for Continental Cablevision, FCC 95-335 (released August 3, 1995), at ¶¶ 15-25.

¹² Time Warner Social Contract Order at ¶ 32; Continental Cablevision Social Contract Order at ¶ 22.

would be imposed on cable operators, their suppliers, and consumers are very real.

Respectfully submitted,

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